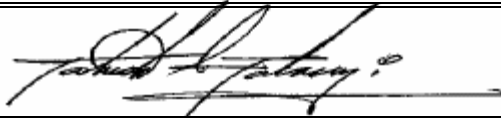


**IDAHO STATE
DEPARTMENT OF AGRICULTURE**

APPROVED BY:



ORIGINAL EFFECTIVE DATE:

July 1, 1997

REVISION DATE:

September 27, 2001

TITLE: DUE PROCESS AND PROBLEM-SOLVING PROCEDURES

GENERAL INFORMATION

This document contains the Idaho State Department of Agriculture's (Department) due process and problem-solving procedures. These procedures replace the old "grievance" procedure. The 1997 Idaho Legislature created the new two-track system by passing House Bill 217, which was signed into law by Governor Batt effective July 1, 1997. The new procedures will continue to provide employees with a forum to discuss and resolve job-related issues.

The two-track system is designed to separately accommodate disciplinary and nondisciplinary issues. The first track, called the "Due Process Track," deals with the disciplinary actions set forth in Idaho Code, Section 67-5315(2), -- dismissals, suspensions, and demotions, and with all involuntary transfers. The Due Process Track generally requires the Department to provide the affected employee with notice and an opportunity to be heard before making any decision to impose a disciplinary sanction or make an involuntary transfer. The second track, called the "Problem-Solving Track," deals with nondisciplinary matters (job-related matters other than those defined as disciplinary or involuntary transfers under Idaho Code, Section 67-5315(2)). The Problem-Solving Track generally requires an employee to meet with his or her immediate supervisor or designee to resolve the matter(s), file for problem-solving, meet with the Bureau Chief or designee, and if no resolution is reached, meet with the Division Administrator or designee, and receive a final decision from the Director or designee. The Due Process and Problem-Solving Tracks are intended to provide a more timely and thorough resolution of work-related matters.

All Department classified employees are being provided with the new due process and problem-solving procedures. This document sets forth the specific requirements of those procedures and the optional procedure for filings alleging sexual harassment or other illegal discrimination. Please carefully review these procedures. Any questions you have regarding the procedures may be answered by the Department's Human Resource office.

THE DUE PROCESS TRACK

Questions and Answers

Question: *Who is entitled to the protections afforded by the Due Process Track?*

Answer: All state employees who are classified under the Idaho Personnel System Act and have attained permanent status (satisfactorily passed the probationary period), including seasonal employees.

Question: *What matters are handled through the Due Process Track?*

Answer: The Due Process Track is designed to handle “disciplinary” matters. The Idaho Code defines disciplinary matters as dismissals, demotions, and suspensions. All involuntary transfers are also handled under the Due Process Track.

Question: *When does an employee file under the Due Process Track?*

Answer: The employee does not file under the Due Process Track. Instead, the Department is required to provide the employee with notice and an opportunity to be heard. When an employee is provided with notice, he or she will also be given a specific period of time within which to respond (a time period not exceeding 10 working days unless both the Department and employee agree otherwise in writing). The employee must comply with the time limit provided for a response, unless the employee decides not to respond or chooses to waive his or her right to respond.

The employee may respond in writing or in person. This is the employee’s opportunity to respond to the notice and to present his or her reasons why contemplated action should not be taken. The Department will not make any decision until after the employee has responded, failed to respond, or otherwise waived his or her right to respond.

Question: *Is there still an impartial review meeting process?*

Answer: No, impartial review meetings are no longer included in the law. Any appeal would go directly to the Idaho Personnel Commission.

Question: *Where can I look if I want to see what the law says about the Due Process Track?*

Answer: The Due Process Track is in the Idaho Code, Section 67-5315, and in the Idaho Personnel Commission rules, IDAPA 28.01.01.200.

Explanation and Steps of the Due Process Track

A permanent classified employee is entitled to due process before the Department makes any decision to impose discipline (dismissal, suspension, or demotion) or make an involuntary transfer. Due process requires the employee receive notice and an opportunity to be heard before the decision is made.

Step 1: Notice

If the Department is contemplating taking disciplinary action or making an involuntary transfer, the Department will provide notice to a permanent classified employee. The notice will contain the following information:

- (1) Notice of the Contemplated Action: The Department will provide the employee with notice of the contemplated action(s). For example, the notice may state that dismissal is the contemplated action. It may also set forth alternative forms of discipline, such as demotion or suspension.
- (2) Notice of the Basis for the Contemplated Action: The Department will provide the basis for the contemplated action. If the contemplated action is disciplinary in nature, the “basis” of the contemplated action is the for-cause reason and corresponding legal citation which supports disciplinary action against a permanent classified employee. The “for-cause” reasons are listed in Idaho Code, Section 67-5309(n), and in the Idaho Personnel Commission rules at IDAPA 28.01.01.190.01. For example, if the Department is considering dismissal due to an employee’s insubordination, the notice would identify the basis as insubordination pursuant to Idaho Code, Section 67-5309(n)(5), and/or IDAPA 28.01.01.190.01.e.
- (3) Explanation of the Evidence: The Department will provide an explanation of the information or evidence pertinent to the contemplated action. This could include an explanation of statements made by other employees, an explanation of documents, and/or an explanation of events leading to the notice.

The notice of contemplated action will be sent or delivered to the employee and the State Human Resource Administrator concurrently.

Step 2: Opportunity to Respond

A permanent classified employee who receives a notice of contemplated action is entitled to an opportunity to respond in person or in writing. The opportunity to respond is the employee’s opportunity to respond to the notice and present his or her reason(s) why the contemplated action should not be taken. The employee may accept the opportunity and respond within the time period, may reject the opportunity by failing to respond within the time period, or may waive the opportunity

Time to Respond: The notice of contemplated action will contain a specific time period within which an employee may respond, *e.g.*, “you have an opportunity to respond no later than three (3) working days after the date you receive this notice.” The Department will select the time period for a response, but in no event may that time period exceed ten (10) working days after the employee has received notice unless both the Department and employee agree otherwise in writing. The Department will make the final decision after the employee has responded, failed to respond, or otherwise waived the opportunity to respond in writing.

Right to Representation: The law provides an employee with the right to be represented by a person of his or her choosing during the opportunity to respond.

Step 3: Department’s Decision

The Department will notify the employee of its decision no later than ten (10) working days after the employee has responded, failed to respond, or otherwise waived his or her right to respond in writing. If a disciplinary sanction is imposed or the employee is otherwise dissatisfied with the decision, the employee may have the right to appeal the Department’s decision to the Idaho Personnel Commission if permitted by Idaho Code, Section 67-5316(1). The Department’s final decision will be sent or delivered to the employee and the State Human Resource Administrator concurrently. The Due Process Track ends when the Director or Director’s designee notifies the employee of the Department’s decision. Personal delivery or deposit of the decision in the U.S. mail with postage prepaid constitutes notice to the employee of the decision. A request for appeal to the Idaho Personnel Commission must be filed in writing through the State Human Resource Administrator within 35 days after notice of the Department’s decision.

Optional Mediation Step

Mediation is not an option unless both the Department and employee agree. The Department and employee may mutually agree to engage in mediation during the Due Process Procedure. If both sides agree, the time limitations for the opportunity to respond and the Department’s decision will stop running pending mediation. The Department and employee must also agree upon a mediator. The Division of Human Resources may be able to provide names of trained mediators.

THE PROBLEM-SOLVING TRACK

Questions and Answers

Question: *Who is eligible to file under the Problem-Solving Track?*

Answer: Classified Department employees, including seasonal employees, with permanent, provisional, or entrance probationary status are eligible to file under the Problem-Solving Track. Temporary and other non-classified employees shall have the right to use the Problem-Solving procedure only in matters involving charges of discrimination or sexual harassment.

Question: *What matters are handled through the Problem-Solving Track?*

Answer: Any job-related matter may be handled through the Problem-Solving Track, except the following: (1) compensation, except as it applies to alleged inequities within a particular agency or Department; (2) termination during the entrance probationary period; (3) unsatisfactory performance during entrance or promotional probationary periods; and (4) disciplinary matters set forth in Idaho Code, Section 67-5315(2), (dismissals, demotions, suspensions, and involuntary transfers).

Question: *When does an employee file under the Problem-Solving Track?*

Answer: An eligible employee must file no later than five (5) working days after being notified of or becoming aware of any matter which may be handled through the Problem-Solving Track. If the filing concerns an ongoing pattern of harassment or illegal discrimination, the filing will be timely if filed within five (5) working days after the last allegedly offensive action. The five-working day time limit does not include days the employee is absent from work due to illness or approved leave. It is important to file within the time limit, because the law says that even though the Department may accept the filing, the employee waives any right of review by the Idaho Personnel Commission by not complying with the time limit for filing.

Question: *Where can I look if I want to read what the law says about the Problem-Solving Track?*

Answer: The Problem-Solving Track is in the Idaho Code, Section 67-5315, and in the Idaho Personnel Commission rules, IDAPA 28.01.01.200.

Question: *How do I file under the Problem-Solving Track?*

Answer: The employee must first make a reasonable attempt to discuss and resolve the matter with his or her immediate supervisor. If the matter is not resolved, then the employee may timely file a written Problem-Solving Request Form with his or her immediate supervisor; or, if the immediate supervisor is not available, with the second-level supervisor. Problem-Solving Request Forms are available in the Department's Human Resource office.

Explanation and Steps of the Problem-Solving Track

Permanent, provisional, and entrance probationary classified employees, including seasonal employees, are eligible to file under the Problem-Solving Track. Temporary and other non-classified employees shall have the right to use the Problem-Solving procedure only in matters involving charges of discrimination or sexual harassment. The Problem-Solving Track is a process, which includes meeting with the immediate supervisor, filing for problem-solving, meeting with one or two additional levels of management, and receiving a final decision from the Director or designee. Retaliation for filing under the problem-solving procedure, or for participating as a witness or representative, is expressly prohibited.

Step 1: Meeting with Immediate Supervisor

Before actually filing for problem-solving, an eligible employee must first make a reasonable attempt to meet with and resolve the matter(s) with his or her immediate supervisor. Representatives are not permitted at the informal meeting with the immediate supervisor.

Employees and supervisors are strongly encouraged to engage in this informal problem-solving meeting in order to identify the precise matter(s) at issue, discuss ways to resolve the matter(s), and attempt to resolve the matter(s) at the lowest level possible, consistent with the intent of the Problem-Solving Track.

Step 2: Filing for Problem-Solving

Eligible employees are required to file a request for problem-solving in writing no later than five (5) working days after being notified of or becoming aware of any matter which may be handled through the Problem-Solving Track. If the filing alleges an ongoing pattern of harassment or illegal discrimination, it shall be considered timely if filed within five (5) working days after the last allegedly offensive action. The five-working-day time limit does not include days the employee is absent from work due to illness or approved leave.

The employee must file the Problem-Solving Request Form with his or her immediate supervisor, or, if the immediate supervisor is not available, with the second-level supervisor.

The Department may accept a late filing, but the employee loses any right of review by the Idaho Personnel Commission by not complying with the five (5) working day time limit. The Division Administrator, in consultation with the Legal Bureau, will decide whether to accept a late Problem-Solving Request.

The employee is also entitled to be represented by a person of his or her choosing at each step of the problem-solving procedure, except the initial informal discussion with the immediate supervisor.

After an employee files a request for problem-solving, the employee and management may mutually agree in writing to waive any time element or intermediate step of the problem-solving procedure. In addition, the term "working day," as used in the problem-solving procedure, shall not include any day the employee or the Department's representative is out of the office due to illness, approved leave, or business.

Step 3: Meeting with Bureau Chief

The employee will meet with the Bureau Chief or designee no later than five (5) working days after filing the request for problem-solving. The Bureau Chief or designee will consult with the employee's immediate supervisor to determine who may best be able to resolve the problem in this meeting with the employee. The Bureau Chief or designee will also take into account the employee's preference in deciding who should be present. Since the goal of this procedure is to resolve problems at the lowest level possible, this meeting may involve the immediate supervisor and any additional people who may be helpful in resolving the issue(s). If resolution of the problem(s) is reached at the meeting, the Bureau Chief or designee shall document the resolution on the Resolution or Elevation of Request for Problem-Solving Form, which shall then be signed and dated by the Bureau Chief or designee and the employee.

If resolution is not reached at the meeting, the Bureau Chief or designee shall complete the management portion of a Resolution or Elevation of Request for Problem-Solving Form with his or her suggested solutions and give the form to the employee within two (2) working days after the meeting. The employee will then have one (1) day to accept or reject the suggested solution and to sign and return the form to the Bureau Chief or designee.

Step 4: Meeting with Division Administrator

If there has been no resolution of the problem(s), the employee will meet with the Division Administrator or designee no later than six (6) working days after meeting with the Bureau Chief or designee. This meeting will be similar to the Step 3 meeting, with the Division Administrator or designee consulting with the employee and the Bureau Chief or designee in order to determine how best to resolve the issue(s).

If resolution is not reached at the meeting, the Division Administrator or designee shall complete the management portion of a second Resolution or Elevation of Request for Problem-Solving Form with his or her suggested solutions and give the form to the employee within two (2) working days after the meeting. The employee will then have one (1) working day to accept or reject the suggested solution and to sign and return the form to the Division Administrator or designee.

Step 5: Final Decision from Director

If there has been no resolution of the problem(s), the Director or designee will make a final decision no later than six (6) working days after the employee's meeting with the Division Administrator or designee. The Director or designee may consult with the employee, immediate supervisor, Bureau Chief, Division Administrator, and any other person(s) who participated in the problem-solving procedure in order to determine how best to resolve the issue(s).

The Problem-Solving Track ends when the Director or designee notifies the employee of his or her decision. Personal delivery or deposit of the decision in the U.S. mail with postage prepaid constitutes notice to the employee of the decision. If the employee is dissatisfied with the decision, the employee may have the right to appeal the decision to the Idaho Personnel Commission if permitted by Idaho Code, Section 67-5316(1). A request for appeal to the Idaho Personnel Commission must be filed in

writing through the State Human Resource Administrator within 35 calendar days after notice of the Department's decision.

Optional Mediation Step

Mediation is not an option unless both the Department and employee agree. The Department and employee may mutually agree to engage in mediation during the Problem-Solving Procedure. If both sides agree, the other steps and time limitations (except for the initial five (5) working day filing requirement) of the Problem-Solving Procedure will stop running pending mediation. The Department and employee must also agree upon a mediator. The Division of Human Resources may be able to provide names of trained mediators.

OPTIONAL PROCEDURES FOR DISCRIMINATION OR SEXUAL HARASSMENT COMPLAINTS

If you are not comfortable taking a complaint to your supervisor or manager, you may take your complaint to the Human Resource Officer, another member of the Human Resource Unit, or call Lynn Steel, at the Division of Human Resources. For full information on optional procedures please refer to the Department's **Discrimination or Sexual Harassment Policy and Complaint Procedures**

PROBLEM-SOLVING REQUEST FORM

TO: _____
Immediate Supervisor

FROM: _____
Employee Seeking Problem-Solving

DATE: _____

The employee seeking problem-solving sets forth the following:

1. I seek resolution of the following job-related matter(s):

(Attach additional sheet if necessary)

2. My suggested solution(s) is/are:

(Attach additional sheet if necessary)

3. Please indicate who you wish to attend problem-solving meetings:

Employee's Signature

Resolution or Elevation of Request for Problem-Solving

MANAGEMENT

After attending the problem-solving meeting with the employee, my suggested solution(s) to the matter(s) is/are:

(Attach additional sheet if necessary)

Management Signature

Title

Date

The employee accepts/ rejects (please circle) the suggested solution(s). (If the employee rejects the suggested solution(s), this elevates the request for problem-solving to the next level.)

Employee's Signature

Date